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Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. A-725

VIRGINIA CITIZENS FOR BETTER RECLAMATION, INC. et al
Appellants,

v.

VIRGINIA SURFACE MINING AND RECLAMATION ASSOCIATION, INC., et al.
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

The Virginia Citizens for Better Reclamation, Inc. and the Town of St. Charles, Virginia, defendant-intervenors, appeal from the final judgment of the United States District Court for the Western District of Virginia entered on January 3, 1980, and amended by order dated January 21, 1980, declaring Sections 515(d) and (e), 518, 521(a)(1)-(3), 522, and 525 of the Surface Mining Control and Reclamation Act of 1977 unconstitutional and enjoining the defendant Secretary of the Interior from enforcing these provisions in Virginia.

TABLE OF CONTENTS

Table of Citations.....i

Opinions Below.....1

Jurisdiction.....1

Constitutional Provisions and Statutes involved.....2

Questions presented.....3

Statement of case.....3

The Questions are Substantial.....5

Conclusion.....15

Appendices.....16

TABLE OF CITATIONS

CASES.

Bowles v. Willingham, 321 U.S. 503 (1944)...15

Carero-Toledo v. Pearson Yacht Leasing Leasing Co. 416 U.S. 663 (1974).....15

Central Union Trust Co. v. Garvon, 254 U.S. 554 (1921).....15

Ewing v. Mytinger and Casselberry, Inc., 339 U.S. 594 (1950).....15

Goldblatt v. City of Hempstead, 369 U.S. 590 (1962).....12

Hadachek v. Sebastian, 239 U.S. 394 (1915). 13

In re Surface Mining, 456 F. Supp. 1301 (1979).....14

Matthews v. Eldridge, 424 U.S. 319 (1975)...13

Miller v. Schoene, 267 U.S. 272 (1928).....12

National League of Cities v. Usery, 426 U.S. 833 (1976).....6,8

Nebbia v. New York, 291 U.S. 502 (1934).....8

North American Cold Storage Co. v. Chicago, 211 U.S. 306 (1908).....15

Phillips v. Commissioner of Internal Revenue, 283 U.S. 583 (1931).....15

Transportation Co., et. al. v. City of New York, 98 S. Ct. 2646 (1978).....12

TABLE OF CITATIONS (cont'd)

CONSTITUTIONAL PROVISIONS:

Fifth Amendment.....9-14

Tenth Amendment.....6,7,8

STATUTES:

Public Law 95-87, Sections 515d(d) and (e)...6-13

Public Law 95-87, Section 518.....13-15

Public Law 95-87, Section 521(a)(1)-(3).....13-15

Public Law 95-87, Section 522.....13-15

Public Law 95-87, Section 525.....13-15

OPINIONS BELOW

The opinion and amendment thereto of the district court on appeal, as yet unreported, appears in the appendix to the jurisdictional statement filed by the Appellant Secretary of the Interior in Case No. A-720.

The opinion of the United States Court of Appeals for the Fourth Circuit, dissolving a preliminary injunction granted by the District Court, is reported at 604 F. 2d 312 (1979) and appears in the appendix to the Secretary's jurisdictional statement in Case No. A-720.

JURISDICTION

The final judgment of the United States District Court for the Western District of Virginia declaring sections 515(d) and (e), 518, 521(a)(1)-(3), 522, and 525, of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 91 Stat. 445, 30 U.S.C. 1201 et. seq.) unconstitutional was entered on January 3, 1980 and amended on January 21, 1980. These provisions are set forth in the appendix to the Secretary's jurisdictional statement in Case No. A-720.

Notices of appeal to this Court were duly filed by the defendant-intervenors in the United States District Court for the Western District of Virginia on January 30, 1980. Copies of these notices are attached in the appendix hereto.

This appeal is being docketed with this Court within sixty (60) days of filing of these Notices of Appeal. The jurisdiction of this Court is invoked under 28 U.S.C. 1252.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment, United States Constitution:

> No person shall...be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation.

Tenth Amendment, United States Constitution:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The pertinent provisions of the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87 are set forth in the appendix hereto, Page___A, infra.

QUESTIONS PRESENTED

1. Do Sections 515(d) and (e) of the Surface Mining Control and Reclamation Act of 1977 violate the Tenth Amendment to the United States Constitution?

2. Do Sections 515(d) and (e) and 522 of the Surface Mining and Control and Reclamation Act of 1977 violate the Due Process and Takings clauses of the Fifth Amendment to the United States Constitution?

3. Do Sections 518, 521(a)(1)-(3), and 525 of the Surface Mining Control and Reclamation Act of 1977 violate the Due Process clause of the Fifth Amendment to the United States Constitution?

STATEMENT OF THE CASE

On August 3, 1977, Congress responded to public outcry against the abuses of inadequately regulated strip mining by passing the Surface Mining Control and Reclamation Act, P.L. 95-87, 91 Stat. 445, 30 U.S.C. 1201 et. seq. On October 23, 1978, the Virginia Surface Mining and Reclamation Association, Inc., sixty three of the Association's member coal companies, and four individual land owners filed suit in the United States District Court for the Western District of Virginia broadly challenging the consti-

tutionality of the Act, and praying that the Secretary of the Interior be enjoined from enforcing it in Virginia. The Commonwealth of Virginia and the Town of Wise, Virginia hearkened to the complaints of the coal stripping industry and intervened on behalf of these plaintiffs. The Virginia Citizens for Better Reclamation, Inc., and the Town of St. Charles Virginia, concerned with the State's history of condoning strip mine abuses, intervened in support of the Secretary's enforcement of the Act.

On February 14, 1979, after a hearing on plaintiff's motion for a preliminary injunction, the district court enjoined the Secretary from enforcing Sections 502 through 522 of the Act, (the heart of the Act's regulatory standards), pending final disposition of plaintiff's action on the merits. On August 10, 1979, this injunction was dissolved by the Fourth Circuit Court of Appeals. 604 F. 2d 312.

The district court continued its review of the volumes of evidence adduced in the thirteen day trial while the Secretary's appeal of the preliminary injunction was pending. On January 3, 1980, the

district court entered its final order declaring several provisions of the Act unconstitutional and permanently enjoining their enforcement. Responding to widespread confusion concerning certain ramifications of its decision, the district court coupled its denial of the secretary's motion for a stay pending appeal with an order and opinion clarifying its permanent order. This clarification was entered on January 21, 1979.

Defendants and defendant-intervenors filed a motion for a stay of the district court's order with the Chief Justice of this Court, sitting as Circuit Justice for the Fourth Circuit. On February 25, 1980, the Chief Justice signed an order staying the district court's order, pending filing of a response by plaintiffs. This response and the motions for stay were considered by the entire Court and on March 17, 1980, this Court entered an order staying the judgment of the district court, pending the timely filing and disposition of the appeal.

THE QUESTIONS ARE SUBSTANTIAL

1. Do Sections 515(d) and (e) of the Surface

Mining Control and Reclamation Act of 1977 violate the Tenth Amendment of the United States Constitution?

Sections 515(d) and (e) establish special performance standards for strip mining on steep slopes. The district court order, as clarified, strikes these provisions to the extent that they require restoration of strip mined land to the approximate original contour and prohibit all placement of spoil on the down slope. The district court supported this ruling with the following analysis of National League of Cities v. Usery, 426 U.S. 833 (1976). The court stated:

> "Congressional action alleged to be in contravention of the Tenth Amendment must be scrutinized to determine whether the legislation is directed to the states as states and usurps an integral government function."

District Court Order, January 3,1980, Page 8.

The district court reasoned in brief that the Act requires that state reclamation laws must conform to federal laws, thus it is directed to the states as states. Land use regulation is a traditional state function. Furthermore, the steep slope stripping

provisions deprive the state of control of economic development because areas levelled by strip mining can be put to agricultural or commercial usage. Finally the district court allowed that requirements of Sections 515(d) and (e) are so difficult to meet that the state's coal industry has suffered.

The district court then decided that:

> "In considering the relief to be granted in a case like this, the state and federal government's interests must be balanced."

District Court Order, January 3, 1980, Page 13.

Applying this balancing test, the district court concluded there would be no damage to the federal government nor to the environment were these sections to be enjoined, while if they were not enjoined, the state's economy would be drastically affected. Hence the sections were declared unconstitutional.

The principal question raised by this line of reasoning is whether the district court was entitled to invalidate an exercise of the commerce power on cost-benefit grounds--invoking the Tenth Amendment by casting the cost analysis in terms of the federal law's impact on a state's economy. This type of

review of the economic wisdom of Congressional action was rejected by the federal judiciary over forty years ago. See, Nebbia v. New York, 291 U.S. 502 (1934).

National League of Cities merely held that the Tenth Amendment prohibits Congress from interfering with a state's sovereignty as an employer--that federal wage/hour controls do not apply to state employees. This decision cannot be said to invalidate every act of Congress which affects the economic development of a state in a manner displeasing to a federal district court.

The district court's determination that Sections 515(d) and (e) of the Surface Mining Act violate the Tenth Amendment is nothing but a subject judgment that the costs of the legislation outweigh its benefits--substantive due process in a new set of clothes. Regardless of its garb, the decision below is inconsistent with current constitutional doctrine and should be overruled.

2. Do Sections 515(d) and (e) and 522 of the Surface Mining Control and Reclamation Act of 1977 violate the Due Process and Takings clauses of the Fifth Amendment to the United States Constitution?

Sections 515(d) and (e), as noted above require restoration of strip mined steep slopes to the approximate original contour. Section 522 declares certain areas unsuitable for coal surface mining, including lands within the national park system, lands within one hundred feet of the outside right-of-way line of any public road, lands within three hundred feet of a school, and other areas. Section 522 also requires states wishing to assume primary regulatory authority to adopt procedures for designating other lands unsuitable for stripping.

The district court ruled that these sections:

> "Effectively prohibit the mining of a person's private property, thereby resulting in a physical property restriction and a nearly complete dimunition in the value of the land, as well as loss of future profits."

District Court Order, January 3, 1980, Page 2.

Accordingly, the district court ruled that these provisions are:

"Unconstitutional as a taking of private property without just compensation in contravention of the Fifth Amendment."

District Court Order, January 3, 1980, Page 2.

The heart of the district court's rationale follows.

"There are those in every generation who believe that private property should be taken without compensation whenever it is for the public good as conceived by them. This generation is no exception and exponents of this belief fill the halls of Congress and the bureaucracy and infiltrate the courts. The right of a person to own land and the protection of that right were sacred tenants of the common law; and it is no less sacred today as the population booms. We are aware that God only created so much land; that each parcel is considered unique; therefore, as the desire for land increases and the parcels of ownership become smaller and smaller the importance of the Fifth Amendment increases rather than diminishes."

District Court Opinion, January 3, 1980

From this philosophic foundation, the district court goes on to its very factual conclusion.

"The requirement of return to approximate original contour amounts to a physical restriction on the removal of coal. The land owner cannot remove his coal because it is economically and physically impossible to comply with the steep slope excavation provisions of the Act."

District Court Opinion, January 3, 1980, Page 24.

From this the district court had no problem finding sections 515(d) and (e) an uncompensated taking, violative of the Fifth Amendment.

The first and most obvious flaw in this rationale is that it ignores the existence of underground mining technologies. Considering this, these sections do not deprive the mineral owner of his rights; they merely require that these rights be exercised in the manner which, in the judgment of Congress, is not unacceptably destructive of the environment and the rights of surrounding citizens.

Furthermore, the district court's suggestion that the Federal Government must compensate coal owners in exchange for their adoption of socially acceptable mining and reclamation practices surely does not square with our society's acceptance and validation of a wide range of land use regulations ranging from elaborate zoning ordinances and subdivision regulation, restrictive covenants and property taxation to extensive federal air and water pollution controls, and other environmental laws. Many cases can be cited to illustrate the law's recognition that private property may be regulated without compensation to serve the public good.

For instance, in Goldblatt v. City of Hempstead, 369 U.S. 590 (1962), this Court upheld a city safety ordinance which banned any excavation below the water table and effectively prohibited an established sand and gravel mining business from continuing operations. The law prevented the most lucrative use of the land and caused severe individual hardship, but was nevertheless constitutional. The Court found that governmental regulation to prevent noxious land uses from inflicting injury upon the community is necessary to the existence and safety of organized society. Id. at 593. See also, Transportation Company, et. al. v. City of New York, 98 S. Ct. 2646 (1978), (application of New York City's landmarks preservation law, which prevented additions to the historic Penn Central Terminal, did not constitute a taking even though it caused significant dimunition in value); Miller v. Schoene, 267 U.S. 272 (1928), (a Virginia law which required the destruction of a diseased stand of cedar trees to protect surrounding apple orchards deemed not a taking); Hadachek v.

Sebastian, 239 U.S. 394 (1915), (a City of Los Angeles zoning ordinance prohibiting the establishment or operations of brickyards within described geographical limits, thereby causing a decrease in the value of plaintiff's property from $800,000.00 to $60,000.00, not a taking).

> (3) Do Sections 518, 521(a)(1)-(3), and 525 of the Surface Mining Control and Reclamation Act of 1977 violate the due process clause of the Fifth Amendment to the United States Constitution?

These Sections are the heart of the Act's enforcement provisions. The district court enjoined these provisions to the extent that they relate to summary issuance of cessation orders and civil penalties, concluding that summary issuance of sanctions deprive mine operators of due process under the Fifth Amendment. District Court Order, January 21, 1980, Page 2. The district court quoted the criteria of Matthews v. Eldridge, 424 U.S. 319, 335 (1975) in finding these sections procedurally inadequate.

> "First, the private interest that will be affected by the official actions; second, the risk of a erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the

> function involved in the fiscal and administrative burdens that the additional or substitute requirements would entail."

District Court Opinion, January 3, 1980, Page 35. (quoting 424 U.S. at 335.)

The district court then pointed out that the issuance of a cessation order even for a day or so could destroy a marginally successful coal mine, but went on to acknowledge the strong public interest in allowing cessation orders when there is an imminent threat to public health or safety or the environment. Balancing these concerns, the district court concluded that the public interest could be satisfied by judicial issuance of temporary restraining orders in cases of imminent danger, and because the public concern was thus alleviated, the coal operators' interest tilted the balance against summary issuance of sanctions.

This reasoning is squarely inconsistent with the ruling of the District Court for the District of Columbia, in In re Surface Mining 456 F. Supp. 1301 (1979), which upheld the sections in question against a similar due process challenge. Furthermore, the district court's ruling is inconsistent with the long line of cases upholding summary administrative action taken to protect a significant public interest. e.g.

Calero-Toledo v. Pearson Yacht Leasing Company, 416 U.S. 663 (1974), (seizure of a rental yacht carrying marijuana); Ewing v. Mytinger and Casselberry, Inc., 339 U.S. 594 (1950), (seizure of mislabelled vitamin product); Bowles v. Willingham, 321 U.S. 503 (1944), (rent control orders); Phillips v. Commissioner of Internal Revenue, 283 U.S. 589 (1931), (collection of federal revenue); Central Union Trust Company v. Garvan, 254 U.S. 554 (1921), (seizure of enemy property); North American Cold Storage Company v. Chicago, 211 U.S. 306 (1908), (seizure of contaminated food).

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully Submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

VIRGINIA SURFACE MINING AND RECLAMATION ASSOCIATION, INC et al Plaintiffs,	)
v.	)
CECIL D. ANDRUS, Secretary, Department of the Interior, et al, Defendants.	)

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Defendant-intervenor, Town of St. Charles, by Counsel, hereby gives notice that it does hereby appeal to the Supreme Court of the United States of America the Final Order and Judgment of the Honorable Glen M. Williams, Judge of the aforesaid Court, as entered by the Court on January 3, 1980.

This appeal is taken pursuant to 28 U.S.C. Section 1252.

TOWN OF ST. CHARLES
-by Counsel-

/s/ Robert T. Copeland
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PROOF OF SERVICE

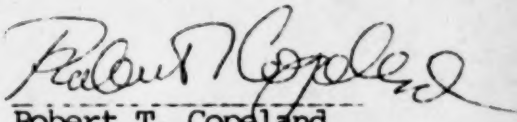
I, Robert T. Copeland one of the attorneys for the Town of St. Charles and Virginia Citizens for Better Reclamation, Inc., appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the ___ day of March, 1980, I served copies of the foregoing Jurisdictional Statement on the several parties thereto, as follows.

1. On the United States, by mailing a copy thereof, postage pre-paid, to Mr. Andrew F. Walch, Attorney, Department of Justice, Land and Natural Resources Division, Room 1718, Benjamin Franklin Station, P. O. Box 7415, Washington, D.C. 20004, and by mailing a copy in a jduly addressed envelope, with postage prepaid, to The Solicitor General, Department of Justice, Wasington, D.C. 20530.

2. On the Commonwealth of Virginia, by mailing a copy, in a duly addressed envelope, with mail postage prepaid, to Mr. Roger L. Chaffe, Assistant Attorney General, Supreme Court Building, 1101 East Broad Street, Richmond, Virginia 23219.

3. On Virginia Surface Mining and Reclamation Association, Inc., by mailing a copy, in a duly addressed envelope with mail postage prepaid to Robert T. Winston, The Law Building, Norton, VA 24273, and Mr. John L. Kilcullen, 1800 M Street, NW, Suite 600, North Lobby, Washington, D.C. 20036.

4. On the Town of Wise, Virginia, by mailing a copy, in a duly addressed envelope with mail postage prepaid, to Kenneth P. Asbury P. O. Box 338, Wise, Virignia 24293.



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